

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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CHAIRMAN

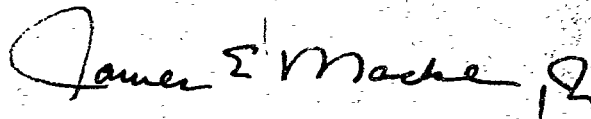
JAMES E. MACKLIN, JR.
SECRETARY

April 1, 1991

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EDWARD LEAVY
BANKRUPTCY RULES

TO THE CHAIRMEN, MEMBERS AND REPORTERS OF THE JUDICIAL
CONFERENCE COMMITTEES ON RULES OF PRACTICE AND PROCEDURE

I am enclosing a corrected copy of the proposed
amendments to Bankruptcy Rules 5011(b) and 9027(e)
transmitted to you on March 15, 1991, as part of Appendix C
to the Report to the Judicial Conference Committee on Rules
of Practice and Procedure.



James E. Macklin, Jr.
Secretary

Enclosure

cc: Mr. Peter G. McCabe
Ms. Patricia S. Channon
Mr. David N. Adair, Jr.
Mr. Thomas C. Hnatowski

PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE

Rule 5011. Withdrawal and Abstention
from Hearing a Proceeding

* * * * *

1 (b) ABSTENTION FROM HEARING A PROCEEDING.
2 ~~Unless a district judge orders otherwise, a A~~
3 ~~motion for abstention pursuant to 28 U.S.C. §~~
4 ~~1334(c) shall be governed by Rule 9014 and shall be~~
5 ~~served on the parties to the proceeding. heard by~~
6 ~~the bankruptcy judge, who shall file a report and~~
7 ~~recommendation for disposition of the motion. The~~
8 ~~clerk shall serve forthwith a copy of the report~~
9 ~~and recommendation on the parties to the~~
10 ~~proceeding. Within 10 days of being served with a~~
11 ~~copy of the report and recommendation a party may~~
12 ~~serve and file with the clerk objections prepared~~
13 ~~in the manner provided in Rule 9033(b). Review of~~
14 ~~the report and recommendation by the district court~~
15 ~~shall be governed by Rule 9033.~~

* * * * *

COMMITTEE NOTE

~~The words "with the clerk" in subdivision (b) are~~
~~deleted as unnecessary. See Rules 5005(a) and 9001(3).~~

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Subdivision (b) is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and recommendation for disposition of a motion for abstention under 28 U.S.C. § 1334(c)(2). This amendment is consistent with § 309(b) of the Judicial Improvements Act of 1990 which amended § 1334(c)(2) so that it allows an appeal to the district court of a bankruptcy court's order determining an abstention motion. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014 and that it must be served on all parties to the proceeding which is the subject of the motion.

[NOTE: THE ABOVE IS THE COMMITTEE NOTE THAT ACCOMPANIED THE PROPOSED AMENDMENT TO RULE 5011 THAT WAS APPROVED BY THE JUDICIAL CONFERENCE IN SEPTEMBER 1990, SHOWING THE CHANGES RECOMMENDED BY THE ADVISORY COMMITTEE AT THIS TIME]

Rule 9027. Removal

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1 ~~(e)~~ (d) REMAND. A motion for remand of the
2 removed claim or cause of action shall be governed
3 by Rule 9014 ~~filed with the clerk and served on the~~
4 parties to the removed claim or cause of action.
5 ~~Unless the district court orders otherwise, a~~
6 ~~motion for remand shall be heard by the bankruptcy~~
7 ~~judge, who shall file a report and recommendation~~
8 ~~for disposition of the motion. The clerk shall~~
9 ~~serve forthwith a copy of the report and~~
10 ~~recommendation on the parties. Within 10 days of~~

11 ~~being served with a copy of the report and~~
 12 ~~recommendation, a party may serve and file with the~~
 13 ~~clerk objections prepared in the manner provided in~~
 14 ~~Rule 9033(b). Review by the district court of the~~
 15 ~~report and recommendation shall be governed by Rule~~
 16 ~~9033.~~

COMMITTEE NOTE

The abrogation of subdivision (b) is consistent with the repeal of 28 U.S.C. § 1446(d). The changes substituting the notice of removal for the application for removal conform to the 1988 amendments to 28 U.S.C. § 1446.

Rules 7008(a) and 7012(b) were amended in 1987 to require parties to allege in pleadings whether a proceeding is core or non-core and, if non-core, whether the parties consent to the entry of final orders or judgment by the bankruptcy judge. Subdivision (a)(1) is amended and subdivision (f)(3) is added to require parties to a removed claim or cause of action to make the same allegations. The party filing the notice of removal must include the allegation in the notice, and the other parties who have filed pleadings must respond to the allegation in a separate statement filed within 10 days after removal. However, if a party to the removed claim or cause of action has not filed a pleading prior to removal, there is no need to file a separate statement under subdivision (f)(3) because the allegation must be included in the responsive pleading filed pursuant to Rule 7012(b).

Subdivision (e), redesignated as subdivision (d), is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and recommendation for disposition of a motion for remand under 28 U.S.C. § 1452(b). This amendment is consistent with § 309(c) of the Judicial Improvements Act of 1990, which amended § 1452(b) so that it allows an appeal to

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the district court of a bankruptcy court's order determining a motion for remand. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014. The words "filed with the clerk" in subdivision (e), redesignated as subdivision (d), are deleted as unnecessary. See Rules 5005(a) and 9001(3).

[NOTE: THE ABOVE IS THE COMMITTEE NOTE THAT ACCOMPANIED THE PROPOSED AMENDMENT TO RULE 9027 THAT WAS APPROVED BY THE JUDICIAL CONFERENCE IN SEPTEMBER 1990, SHOWING THE CHANGES RECOMMENDED BY THE ADVISORY COMMITTEE AT THIS TIME]